IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O. O. C. J.

APPEAL NO.987 OF 1997
IN
WRIT PETITION NO.1774 OF 1994

Jayant Dhirajlal Kachalia
A-23, Asian Building,
Manmala Tank Road, Matunga (West) ..Appellant.
Mumbai 400 016. (Orig. Respondent No.1)

Vs.

1. M/s. Dowells Electro Works
Having its Registered Office at 1,
Satguru Estate, First Floor,
Off Aarey Road, Goregaon (East), ..Respondent.
Mumbai 400 063. (Orig. Petitioner)

2. P. C. Rathod,
Presiding Officer,
Third Labour Court,
Arun Chambers, Tardeo, ..Respondent.
Mumbai 400 034. (Respondent No.2)

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Shri. Kiran S. Bapat for the Appellant.
Shri. Rahul Nerlekar for the Respondents.

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CORAM: **R. M. S. KHANDEPARKAR, &**
DR. D.Y. CHANDRACHUD, JJ.

11th January, 2007.

ORAL JUDGMENT (Per R.M.S. KHANDEPARKAR, J.) :

1. A short point which arises for consideration in the matter is whether in the facts and circumstances of the case the award of

compensation in lieu of reinstatement and further limiting it to Rs.50,000/- is justified.

2. The Appellant herein was appointed as a commercial artist in the Respondent No.1 firm on 8th November, 1976. His services came to be terminated on 6th August, 1981, consequent to which industrial dispute was sought to be raised and under reference order dated 6th March, 1982 the matter was referred to the Labour Court for adjudication of the dispute. The Labour Court by its award dated 2nd January, 1995 held that the termination of services of the Appellant was illegal and ordered reinstatement without any backwages. The award was sought to be challenged by the Respondent No.1, while the Appellant also filed counter petition to claim backwages. While the Appellant's petition was dismissed *in limine* on 17th July, 1991, the Learned Single Judge allowed the petition filed by the Respondent No.1 by the impugned judgment dated 4th September, 1997 and substituted the relief of reinstatement by awarding compensation in lieu thereof to the extent of Rs.50,000/-. Hence, the present appeal.

3. While challenging the impugned judgment, the learned

advocate for the Appellant submitted that the Learned Single Judge failed to take into consideration the fact that the Appellant had clearly established through the testimony of Harish Kumar, one of the employees of the Respondent No.1 itself that there was sufficient work available with the Respondent No.1 for reinstatement of the Appellant and that therefore there was no reason for ordering compensation in lieu of reinstatement. He further submitted that without prejudice to the first ground of challenge and even assuming that the compensation is to be awarded in lieu of reinstatement, the Learned Single Judge ought to have taken into consideration the fact that at the time of passing of the order by the Learned Single Judge, the Appellant was 42 years of age and therefore he could have attained the age of superannuation after a period of 18 years and therefore the loss which would be sustained by the Appellant on account of awarding of compensation in lieu of reinstatement ought to have been taken into consideration while fixing the amount of compensation, however, the Learned Single Judge failed to consider the same. Reliance was sought to be placed in that regard in the decision in case of **V. B. Rao v. Steel Authority of India Limited and another** (1991 LAB. I. C. 1650). The learned advocate appearing for the

Respondents has submitted that there is no case made out for interference in the impugned order as the materials on record clearly establish that there was no continuous work available for reinstatement of the Appellant and hence the order of compensation in lieu of reinstatement was justified. He has further submitted that the compensation has been awarded by following the law laid down by the Apex Court in **O. P. Bhandari v. Indian Tourism Development Corporation Ltd.** ((1986) 4 SCC 337) and the sum of Rs.50,000/- awarded was equivalent to forty months' salary which would have earned by the Appellant if he was to be reinstated in the said post.

4. As regards the first ground of challenge about the availability of the work to justify reinstatement of the Appellant, it is true that the witness Harish Kumar had deposed in his testimony that after termination of the services of the Appellant, the company used to get the work done from other sources. But at the same time it is to be noted that the witness has categorically admitted that after the termination of the services of the Appellant, no designer or commercial artist was employed by the Respondent No.1 in its firm. As also, the testimony of the Appellant himself

discloses that he is qualified holder of the government diploma in arts and he was employed as commercial artist by the Respondent No.1. He has also admitted that there had been no work of preparing designs and that therefore there was no work given to him after January 1981 till August 1981 i.e. till the date of termination of his services and further that his services were terminated for want of work of the nature for which he was originally employed with the Respondent No.1. It is true that in the course of his cross examination he has denied the suggestion that after January 1981 the company did not introduce any new product. However, at the same time he has nowhere disclosed as to whether the company has produced any new product after January 1981. Curiously after denying the said suggestion he has further stated that “It is not my job and hence I cannot tell which new product the company introduced after January 1981”. Obviously he has no knowledge as to whether the company has introduced any new product after January 1981 or not. As against this, there is a specific assertion on behalf of the Respondent No.1 even in the pleadings before the Labour Court that the company had not introduced any new product after January 1981. In the background of these facts therefore it is apparent that since

January 1981 and particularly after the termination of the services of the Appellant there was no continuous work available for a commercial artist with the Respondent No.1. Considering this aspect of the matter, no fault can be found with the impugned order holding that in the facts and circumstances of the case, the award of compensation in lieu of reinstatement is justified. The Apex Court in **Surendra Kumar Verma v. The Central Government Industrial Tribunal-cum- Labour Court, New Delhi and another** (AIR 1981 SC 422) had clearly held that awarding of compensation in lieu of reinstatement will depend on the facts of each case and the same view has been reiterated in **O. P. Bhandari**'s case as well as in later decision in **Workmen v. Bharat Fritz Werner (P) Ltd. and another** ((1990) 3 SCC 565). Even in **V. B. Rao**'s case relied upon by the learned advocate for the Appellant, the same view was reiterated while holding that the compensation to be awarded to the employee should be reasonable and just depending upon the circumstances of a case.

5. The Apex Court in **Bharat Fritz**'s case while following its earlier decision in **O. P. Bhandari**'s case had held the compensation equivalent to 3.33 years' salary including

allowances as admissible on the basis of the last pay and allowances would be reasonable in lieu of reinstatement. Similar view had been taken by the Apex Court in number of cases including **Shetty (S. S.) v. Bharat Nidhi Ltd.** (1957 II L.L.J. 696) and **Assam Oil Company Ltd. v. Its workmen** (1960 I L.L.J. 587). In **Utkal Machinery Ltd. v. Santi Patnaik (Miss)** (1966 I L.L.J. 398) an amount of compensation of two years' salary was reduced to one year's salary on the ground that the employee was employed with the employer only for five months. In **Mahendra Singh Dantwal v. Hindustan Motors Limited and others** (1976 II L.L.J. 259) the compensation was quantified at Rs.20,000/-. In **the Management of Monghyr Factory of I.T.C. Ltd., Monghyr, Bihar v. The Presiding Officer, Labour Court, Patna (Bihar) and others** (1978 LAB I.C. 1256) the Supreme Court quantified the compensation to Rs.30,000/- in the facts and circumstances of the said case. It is thus clear that the consistent view taken by the Apex Court regarding the quantum of compensation is on the basis of the facts and circumstances of each case. The similar view has been taken by this Court in **Jagatpal Dhuria v. Madhav Corporation** (2001 (89) FLR 90) while awarding compensation in

lieu of reinstatement. In the case in hand it is undisputed that the Appellant was employed for a period of five years. The circumstances disclose that after January 1981 the Respondent No.1 could not provide continuous work to the Appellant and even after termination of the services there was no possibility of availing continuous work for the Appellant with the Respondent No.1 of the nature for which he was initially employed with the Respondent No.1. Taking into consideration the wages which were drawn by the Appellant and applying the criteria of **O. P. Bhandari**'s case as well as in **Bharat Fritz**'s case, in our considered opinion, the compensation of Rs.50,000/- awarded in lieu of reinstatement to the Appellant cannot be said to be either unreasonable or unjust. In fact, in the circumstances of the case it is quite reasonable and just compensation awarded to the Appellant in lieu of reinstatement.

6. For the reasons stated above therefore, we do not find any case having been made out for interference in the impugned judgment and consequently the point for consideration is answered in the above terms and accordingly the Appeal is dismissed. There shall be no order as to costs.

(R. M. S. KHANDEPARKAR, J.)

(DR. D.Y. CHANDRACHUD, J.)